

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

**BOBBY FRNAKLIN MYERS, JR., &
BARBARA ANN MYERS,**

Plaintiffs,

v.

NATIONSTAR MORTGAGE, LLC,

Defendant.

CASE NO.: 4:15-cv-00960-SGC

**NATIONSTAR MORTGAGE, LLC'S ANSWER &
AFFIRMATIVE DEFENSES**

COMES NOW Defendant Nationstar Mortgage, LLC (“Nationstar”), by and through its undersigned counsel, and respectfully submits the following answer and affirmative defenses to Plaintiffs’ Amended Complaint:

1. This Paragraph calls for a legal conclusion, and thus, no response is required. However, Nationstar denies the allegations of wrongdoing directed at Nationstar in this Paragraph.
2. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.
3. Nationstar admits that it is a foreign entity doing business in Alabama. Unless otherwise expressly admitted herein, Nationstar denies the allegations contained within this Paragraph.

4. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.

5. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.

6. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.

7. This Paragraph calls for a legal conclusion, and thus, no response is required.

8. This Paragraph calls for a legal conclusion, and thus, no response is required.

9. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.

10. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.

11. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required. However, Nationstar any allegations of wrongdoing directed at Nationstar in this Paragraph.

12. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.

13. Nationstar admits that Plaintiffs are in default under the terms of the subject mortgage loan. Unless otherwise expressly stated herein, Nationstar denies the allegations contained within this Paragraph.

14. Nationstar admits that Plaintiffs are in default under the terms of the subject mortgage loan. Unless otherwise expressly stated herein, Nationstar denies the allegations contained within this Paragraph.

15. This Paragraph calls for a legal conclusion, and thus, no response is required.

16. Nationstar states that the pertinent documents speak for themselves.

17. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.

18. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.

19. This Paragraph calls for a legal conclusion, and thus, no response is required.

20. This Paragraph calls for a legal conclusion, and thus, no response is required.

21. This Paragraph calls for a legal conclusion, and thus, no response is required.

22. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.

23. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.

24. This Paragraph calls for a legal conclusion, and thus, no response is required.

25. This Paragraph calls for a legal conclusion, and thus, no response is required.

26. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.

27. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.

28. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.

29. Nationstar admits that it was assigned the subject note and mortgage. Unless otherwise expressly stated herein, Nationstar denies the allegations contained within this Paragraph.

30. Nationstar states that the pertinent documents speak for themselves.

31. Nationstar admits that Plaintiffs are in default under the terms of the subject mortgage loan. Unless otherwise expressly stated herein, Nationstar denies the allegations contained within this Paragraph.

32. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.

33. Nationstar states that the pertinent documents speak for themselves. Unless otherwise expressly stated herein, Nationstar denies the allegations contained within this Paragraph.

34. Nationstar states that the pertinent documents speak for themselves.

35. Nationstar states that the pertinent documents speak for themselves.

36. Nationstar states that the pertinent documents speak for themselves.

37. Nationstar states that the pertinent documents speak for themselves.

38. Nationstar states that the pertinent documents speak for themselves; however, Nationstar denies the allegations of wrongdoing directed at Nationstar in this Paragraph.

39. Denied as stated.

40. Nationstar lacks sufficient information to admit or deny the allegations contained within this Paragraph and therefore denies the same.

41. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.

42. Nationstar states that the pertinent documents speak for themselves.
43. Denied.
44. Denied.
45. Denied.
46. Denied.
47. Denied.
48. Denied.
49. Denied.
50. Denied.
51. Denied.
52. Denied.
53. Denied.
54. Denied.
55. Denied.
56. Denied.
57. Denied.
58. Denied.
59. Denied as stated.
60. Denied.
61. Nationstar states that the pertinent documents speak for themselves.

62. Nationstar states that the pertinent document speaks for itself.

63. Nationstar states that the pertinent document speaks for itself.

64. Denied.

65. Denied.

66. Nationstar states that the pertinent document speaks for itself.

67. Denied.

68. Denied.

69. Nationstar states that the pertinent document speaks for itself.

70. Nationstar states that the pertinent document speaks for itself.

71. Denied.

72. Denied.

73. Nationstar states that the pertinent document speaks for itself.

74. Nationstar states that the pertinent document speaks for itself.

75. This Paragraph calls for a legal conclusion, and thus, no response is required. However, Nationstar denies the allegations of wrongdoing directed at Nationstar in this Paragraph.

76. Nationstar states that the pertinent document speaks for itself.

77. Nationstar states that the pertinent document speaks for itself.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Nationstar denies the allegations of wrongdoing directed at Nationstar in this Paragraph.

85. Denied.

86. Denied.

87. Nationstar denies the allegations of wrongdoing directed at Nationstar in this Paragraph.

88. Nationstar states that the pertinent document speaks for itself.

89. Denied as stated.

90. Denied as stated.

91. Denied.

92. Nationstar states that the pertinent document speaks for itself.

93. Denied as stated.

94. Denied as stated.

95. Nationstar states that the pertinent document speaks for itself.

96. Denied.

97. Nationstar states that the pertinent document speaks for itself.

98. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required. However, Nationstar denies the allegations of wrongdoing directed at Nationstar in this Paragraph.

99. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required. However, Nationstar denies the allegations of wrongdoing directed at Nationstar in this Paragraph.

100. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required.

101. Denied.

102. Denied.

103. Denied.

104. Denied.

105. Nationstar states that the pertinent documents speak for themselves.

106. Denied.

107. Nationstar states that the pertinent statute speaks for itself.

108. This Paragraph calls for a legal conclusion, and thus, no response is required.

109. Denied as stated.

110. This Paragraph calls for a legal conclusion, and thus, no response is required.

111. This Paragraph calls for a legal conclusion, and thus, no response is required.

112. This Paragraph calls for a legal conclusion, and thus, no response is required.

113. This Paragraph calls for a legal conclusion, and thus, no response is required.

114. This Paragraph calls for a legal conclusion, and thus, no response is required.

115. Nationstar states that the pertinent documents speak for themselves.

116. This Paragraph calls for a legal conclusion, and thus, no response is required.

117. This Paragraph calls for a legal conclusion, and thus, no response is required.

118. Denied.

119. Denied.

120. Denied.

121. Denied.

122. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required. However, Nationstar denies any allegations of wrongdoing directed at Nationstar in this Paragraph.

123. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required. However, Nationstar denies any allegations of wrongdoing directed at Nationstar in this Paragraph.

124. This Paragraph does not contain any allegations directed at Nationstar, and thus, no response is required. However, Nationstar denies any allegations of wrongdoing directed at Nationstar in this Paragraph.

125. Denied.

126. Denied.

127. Nationstar denies the allegations of wrongdoing directed at Nationstar in this Paragraph.

128. This Paragraph calls for a legal conclusion, and thus, no response is required.

129. This Paragraph calls for a legal conclusion, and thus, no response is required.

130. Denied.

131. Nationstar denies that Plaintiffs have been damaged by any acts or omissions by Nationstar and deny that Plaintiffs are entitled to the relief requested or any relief whatsoever.

132. Denied.

133. This Paragraph calls for a legal conclusion, and thus, no response is required.

134. Denied.

135. Denied.

136. Nationstar denies that Plaintiffs are entitled to the relief requested or any relief whatsoever.

137. Denied.

138. Denied.

139. Nationstar denies that Plaintiffs have been damaged by any acts or omissions by Nationstar.

140. Nationstar denies that Plaintiffs have been damaged by any acts or omissions by Nationstar.

141. Nationstar denies the allegations of wrongdoing directed at Nationstar in this Paragraph.

142. Denied.

143. Denied.

144. This Paragraph calls for a legal conclusion, and thus, no response is required.

145. This Paragraph calls for a legal conclusion, and thus, no response is required.

146. This Paragraph calls for a legal conclusion, and thus, no response is required.

147. Denied.

148. Denied.

149. Nationstar denies that Plaintiffs are entitled to the relief requested or any relief whatsoever.

150. Nationstar denies that Plaintiffs have been damaged by any acts or omissions by Nationstar.

151. Denied.

152. Nationstar denies that Plaintiffs are entitled to the relief requested or any relief whatsoever.

153. Nationstar states that the pertinent statute speaks for itself.

154. Denied.

155. Denied.

156. Denied.

157. Denied.

158. Nationstar denies that Plaintiffs are entitled to the relief requested or any relief whatsoever.

159. Denied.

160. Nationstar denies that Plaintiffs have been damaged by any acts or omissions by Nationstar.

161. Nationstar denies that Plaintiffs have been damaged by any acts or omissions by Nationstar.

162. Denied.

163. Denied.

164. Nationstar denies that Plaintiffs are entitled to the relief requested or any relief whatsoever.

165. Nationstar states that the pertinent statute speaks for itself.

166. Denied.

167. Denied.

168. Nationstar denies that Plaintiffs are entitled to the relief requested or any relief whatsoever.

169. Nationstar states that the pertinent statute speaks for itself.

170. Denied.

171. Denied.

172. Denied.

173. Nationstar denies that Plaintiffs are entitled to the relief requested or any relief whatsoever.

174. Nationstar states that the pertinent statute speaks for itself.

175. Denied.

176. Denied.

177. Denied.

178. Nationstar denies that Plaintiffs are entitled to the relief requested or any relief whatsoever.

179. Nationstar states that the pertinent statute speaks for itself.

180. Denied.

181. Denied.

182. Nationstar denies that Plaintiffs are entitled to the relief requested or any relief whatsoever.

183. Nationstar states that the pertinent statute speaks for itself.

184. Denied

185. Denied.

186. Nationstar denies that Plaintiffs are entitled to the relief requested or any relief whatsoever.

187. Denied.

188. Nationstar denies that Plaintiffs have been damaged by any acts or omissions by Nationstar.

189. Denied.

190. Denied.

191. Denied.

192. Denied.

193. Nationstar denies that Plaintiffs are entitled to the relief requested or any relief whatsoever.

194. Nationstar states that the pertinent statute speaks for itself.

195. Denied.

196. Denied.

197. Nationstar denies that Plaintiffs are entitled to the relief requested or any relief whatsoever.

198. Nationstar states that the pertinent statute speaks for itself.

199. Denied.

200. Nationstar denies any allegations of wrongdoing directed at Nationstar in this Paragraph.

201. Nationstar denies that Plaintiffs are entitled to the relief requested or any relief whatsoever.

202. Nationstar states that the pertinent statute speaks for itself.

203. Denied.

204. Denied.

205. Nationstar denies that Plaintiffs are entitled to the relief requested or any relief whatsoever.

206. Nationstar states that the pertinent statute speaks for itself.

207. Denied.

208. Denied.

209. Denied.

210. Nationstar denies that Plaintiffs are entitled to the relief requested or any relief whatsoever.

211. Nationstar states that the pertinent statute speaks for itself.

212. Denied.

213. Denied.

214. Denied.

215. Denied.

216. Denied.

217. Denied.

218. This Paragraph calls for a legal conclusion, and thus, no response is required.

219. This Paragraph calls for a legal conclusion, and thus, no response is required.

220. Denied.

221. Denied.

222. Denied.

223. Denied.

224. Denied.

225. Nationstar states that the pertinent statute speaks for itself.

226. Nationstar states that the pertinent statute speaks for itself.

227. Denied.

228. Denied.

229. Denied.

230. Denied.

231. This Paragraph calls for a legal conclusion, and thus, no response is required.

232. Denied.

233. Denied.

234. Denied.

In response to the unnumbered paragraph, and subparagraphs thereto, immediately following Paragraph 234, Nationstar denies that Plaintiffs are entitled to the relief requested or to any other relief whatsoever.

AFFIRMATIVE DEFENSES

1. Plaintiffs lack standing to assert one or more of their claims.
2. Plaintiffs' claims are barred by their failure to do equity and by the doctrine of unclean hands.

3. To the extent Plaintiffs have suffered any damages, such damages were caused by, and are the responsibility of persons, parties, and/or entities other than Nationstar.

4. Nationstar denies that any of Plaintiffs' alleged damages were proximately caused by Nationstar.

5. Plaintiffs have failed to mitigate their damages.

6. Nationstar pleads the defenses of laches, acquiescence, ratification, statute of frauds, repose, res judicata, release, set-off, waiver, illegality, fraud, accord and satisfaction, parol evidence, payment, judicial estoppel, and collateral estoppel.

7. Plaintiffs' claims are barred by the applicable statutes of limitations.

8. Nationstar denies that any foreclosure proceedings were conducted for an improper purpose.

9. Nationstar denies that it made any alleged misrepresentation, and further denies that Plaintiffs reasonably or justifiably relied on any alleged misrepresentation.

10. Nationstar denies that it is guilty of any conduct entitling Plaintiffs to recover punitive damages.

11. Plaintiffs are barred from recovering punitive damages in excess of those limits established by Ala. Code § 6-11-21 (1975), as amended, and applicable Alabama case law.

12. Plaintiffs' allegations, to the extent that they seek punitive or exemplary damages, violate Nationstar's rights to protection from "excessive fines" as provided in the Eighth Amendment of the United States Constitution and Article I, Section 15 of the Constitution of the State of Alabama, and violate Nationstar's right to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and as provided in the Constitution of the State of Alabama, and therefore fail to state a cause of action supporting the punitive or exemplary damages claimed.

13. Any award of punitive damages to Plaintiffs in this case would be violative of Article I, Section 6 of the Constitution of the State of Alabama, which provides that no person shall be deprived of life, liberty, or property except by due process of law, in that punitive damages are vague and are not rationally related to legitimate government interests.

14. Plaintiffs' claim for punitive damages cannot be upheld based on all grounds set forth by the United States Supreme Court in BMW v. Gore, 116 S. Ct. 1589 (1996), wherein the Court determined that the provisions of Alabama law governing the right to recover punitive damages or the determination of the amount of punitive damages violate a defendant's rights provided by the United States Constitution.

15. Plaintiffs' claims for punitive damages against Nationstar cannot be sustained because an award of such damages under Alabama law is subject to no predetermined limit nor any guidelines of any sort on the amount of such damages that a jury may impose, and would violate Nationstar's due process and equal protection rights guaranteed by the Alabama Constitution. Further, to allow such an award would be improper under the common law and/or public policies of the State of Alabama.

16. Nationstar reserves the right to amend its Answer and Affirmative Defenses as this case progresses.

Respectfully submitted,

/s/ Colin T. Dean

Brian A. Wahl (WAH003)

Colin T. Dean (DEA043)

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ATTORNEYS FOR NATIONSTAR MORTGAGE, LLC

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2015, I served the foregoing via the Court's electronic filing system, which will provide notice to the following:

John G. Watts, Esq.
M. Stan Herring, Esq.
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The Kress Building
301 19th Street North
Birmingham, Alabama 35203
Attorneys for Plaintiffs

/s/ *Colin T. Dean*
OF COUNSEL